

Syllabus in *Moore v. Greenhow*.

United States, it may be sued by its own citizens. This would be to deprive the State, with regard to its own citizens, of its sovereign right of exemption from suit.

It seems to us that the absurdity of this proposition is its sufficient answer. Unless the State chooses to allow itself to be sued, it cannot be sued; it has this prerogative if no other. It is admitted, in point of form, that it cannot be sued by the citizens of other States, or of foreign States, because of the Eleventh Amendment. The whole argument of the opinions of the majority of the court is directed to the object of showing that the State is not sued in the suits under consideration. We do not remember that it is anywhere contended that the State can be sued by its own citizens, against its own law, merely because the Eleventh Amendment does not in terms extend to that case.

In our judgment none of these suits can be maintained, for the reason that they are in substance and effect suits against the State of Virginia.

We have not thought it necessary or proper to make any remarks on the moral aspects of the case. If Virginia or any other State has the prerogative of exemption from judicial prosecution, and of determining her own public policy with regard to the mode of redeeming her obligations, it is not for this court, when considering the question of her constitutional rights, to pass any judgment upon the propriety of her conduct on the one side or on the other.

MOORE *v.* GREENHOW, Treasurer.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

Antoni v. Greenhow, 107 U. S. 769, deciding that the Act of Virginia of January 14, 1882, affords an adequate remedy to the tax-payers required to pay money in lieu of coupons in payment of a license tax affirmed; and a writ of *mandamus* against an officer of that State refused.

Opinion in *Moore v. Greenhow*.

Mr. William L. Royall, Mr. Daniel H. Chamberlain [Mr. William B. Hornblower was with him on the brief], Mr. Wager Swayne and Mr. William M. Everts for plaintiff in error.

Mr. F. S. Blair, Attorney General of the State of Virginia, *Mr. Richard T. Merrick* and *Mr. Attorney-General* for defendant in error.

MR. JUSTICE MATTHEWS delivered the opinion of the court.

The plaintiff in error filed his petition, on April 26, 1884, in the Circuit Court of the City of Richmond, against Greenhow, the defendant, as treasurer of the City of Richmond, praying for a rule *nisi*, commanding the said Greenhow to show cause why a peremptory *mandamus* should not be awarded to the plaintiff, commanding the said treasurer to issue to the petitioner a certificate in writing stating that he had made the deposit required by law in payment of his license tax, as a sample merchant in said city. The petition set forth that the tender made in payment of this deposit consisted of coupons cut from bonds issued by the State of Virginia, and, by contract with the State therein declared receivable in payment of all taxes, debts, demands and dues to the State, and that the tender was refused by the treasurer, and a certificate of deposit withheld, because the 112th section of an act of the General Assembly of Virginia, approved March 15, 1884, for the purpose of assessing taxes on persons, property, and incomes and licenses, requires that all license taxes shall be paid in gold or silver coin, United States treasury notes, or national bank notes, and not in coupons, and another act of the General Assembly of the State, approved March 7, 1884, to regulate the granting of licenses, likewise forbids the payment of license taxes in coupons.

The alternative writ prayed for was denied by the Circuit Court of the City of Richmond, and, on a petition for a writ of error, its judgment dismissing the petition therefor was affirmed by the Supreme Court of Appeals of the State.

This being a case in which, by *mandamus*, the plaintiff in error seeks to compel the officers of the State of Virginia specifically to receive coupons instead of money in payment of

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license taxes, it comes within the exact terms of the decision of a majority of this court in *Antoni v. Greenhow*, 107 U. S. 769, according to which the plaintiff in error is remitted to the remedy provided by the act of January 14, 1882, entitled "An Act to prevent frauds upon the Commonwealth and the holders of her securities in the collection and disbursement of revenues."

The judgment of the Supreme Court of Appeals of Virginia is, therefore,

Affirmed.

MR. JUSTICE FIELD and MR. JUSTICE HARLAN adhere to the views expressed in their dissenting opinions in *Antoni v. Greenhow*, but they agree that the principles announced by the majority in that case, if applied to the present case, require an affirmance of the judgment below.

EAST ALABAMA RAILWAY COMPANY *v.* DOE *ex dem.*
VISSCHER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA.

Argued March 20, 1885.—Decided April 13, 1885.

Various owners of lands in Alabama granted to a railroad corporation of that State, "and its assigns," in 1860, a right of way through the lands, to make and run a railroad, the corporation having a franchise to do so and to take tolls; and it obtained a like right, as to other land, by statutory proceeding. It graded a part of the line. V., a judgment creditor of the corporation, in 1867, levied an execution on the right of way, and it was sold to V., and the sheriff deeded it to him, and he took possession of the road-bed. In 1870, he contracted with another railroad corporation to complete the grading of the line of road for so much per mile, and, on being paid, to transfer to it all his title to the franchise, right of way and property of the old corporation. He completed the work, and was not paid in full, but gave possession of the road, in 1871, to the corporation, and its franchises and road and property passed, in 1880, to another corporation, the defendant, against whom V. brought an action of ejectment, to recover the road-bed: *Held*,